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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of:

ASCENTRA HOLDINGS, INC. AND GRAHAM

ROBINSON AND IVY CHUA,
Debtors.

Main Case No.
21-11854-dsj

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

October 19, 2023

B E F O R E:

HON. DAVID S. JONES

U.S. BANKRUPTCY JUDGE

ECRO: ELECTRONIC RECORDING

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2 1) Hearing RE: Letter Briefs

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1 P R O C E E D I N G S

2 THE COURT: And the next and final case on the
3 calendar, thank you for your patience, is Ascentra Holdings,
4 number 21-11854, letter briefs on the subject, really, of
5 whether a deposition can and should occur with respect to one
6 potential deponent.

7 I'm so sorry to keep you all waiting so long, but I
8 guess that just sometimes happens. So let me get appearances
9 on Ascentra and refocus. Nice to see you all.

10 Mr. McDonald, you're here for whom?

11 MR. MCDONALD: Yes. Good afternoon, Your Honor. We
12 are now afternoon.

13 THE COURT: Yep, 12:03.

14 MR. MCDONALD: Hugh McDonald and John Pintarelli from
15 Pillsbury Winthrop Shaw Pittman LLP on behalf of the foreign
16 representatives.

17 THE COURT: Okay. Great. And Mr. Morris.

18 MR. MORRIS: Good afternoon, Your Honor. John Morris,
19 Pachulski Stang Ziehl & Jones, for the SPGK parties. I just
20 want to alert the Court, I've got to defend a deposition at 1
21 o'clock, and I'd really appreciate --

22 THE COURT: Oh, we're going to be out of here. Forget
23 it.

24 MR. MORRIS: Okay. I appreciate that. Thank you.

25 THE COURT: Yes.

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1 MR. MORRIS: Yeah. Okay.

2 THE COURT: No, that's totally fine. I have a court
3 meeting I'm supposed to be at at 12:30, so we'll see, although
4 I've made an excuse --

5 MR. MORRIS: Okay.

6 THE COURT: -- if necessary. Okay.

7 So look, I am sorry to make you wait so long. Let me
8 say, I have reviewed pretty attentively on this. I saw
9 additional papers came in last night, including a very
10 interesting decision out of Singapore, which it was really very
11 interesting. I read it with great interest.

12 I guess, I mean, I will say at a very unfancy level,
13 it just seems to me we've got a -- we've got one or two
14 contested motions, in aid of which there's a request to depose
15 a person. And I struggle to see -- I mean, I appreciate all
16 the arguments why that's not appropriate, but I struggle to
17 overcome my basic view that opposed motions create contested
18 matters in which discovery is appropriate and if it suits the
19 evidentiary needs of the motion before me. So that's kind of
20 my take coming in. And I think I may as well just say that up
21 front so that the forces opposing can tell me why I should get
22 over that and that everyone knows where I am.

23 That said, I'm all yours. So let me hear from -- I
24 guess it's Pillsbury first, right, the foreign representatives
25 opposing the conduct of the deposition. I think that's where

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1 it makes sense to start.

2 MR. MCDONALD: Yes, Your Honor. Again, Hugh
3 McDonald, Pillsbury Winthrop Shaw Pittman, on behalf of foreign
4 representatives. Your Honor, as Your Honor noted, there have
5 been developments in the case. In addition to the decision by
6 Singapore's highest court, which overturned the lower-court
7 decision, which denied the foreign representatives recognition
8 of the essential proceedings, and now the essential proceedings
9 will be recognized in Singapore, that decision, Your Honor, as
10 we note in our correspondence, was one of the foundations of
11 the motion to terminate the recognition order in this case.

12 We believe the high court's determination was
13 appropriate. And I would also note, and I'm sure you noted
14 with great interest, Your Honor, the court disagreed with
15 SPGK's interpretation of this Court's Global Cord decision and
16 really, I think, drilled home the fact that a Cayman
17 proceeding, an official liquidation regardless of whether it's
18 solvent or insolvent is entitled to recognition under the model
19 law. And in essence, that is what the issue is here, and that
20 is what they have sought the determination from this Court.

21 In addition to the Singapore proceeding, Your Honor,
22 an action was commenced in the Cayman Islands against SPGK and
23 its principal, Mr. Yoshida, and other related entities
24 concerning, among other things, ownership of the Planet Payment
25 funds which have been paid into this court.

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1 We think that has two impacts on these proceedings,
2 Your Honor. With respect to discovery, we now have a pending
3 proceeding. And to the extent that SPGK is seeking discovery
4 related to that proceeding, it may only do so in the Cayman
5 Islands. It may not seek that discovery here.

6 THE COURT: That's just application of the pending
7 proceeding Rule?

8 MR. MCDONALD: Yes, Your Honor. We noted that in our
9 October 11 letter. In support of that, we cited to the Bennett
10 Funding Group case and the Enron Corp. case, as well as Collier
11 on Bankruptcy, which collects a lot of cases on this.

12 So to the extent that -- and we only really realized
13 it when we had our conference with the Court and the letter in
14 opposition to our letter that we realized that SPGK was seeking
15 to broaden the scope of its discovery to also deal with
16 potential claims against SPGK over the Planet Payment funds.

17 THE COURT: Am I right that formally the subpoena was
18 issued under Rule 2004? I mean, I know in my prior ruling
19 there was -- it's tricky, right? It's under the -- just, it's
20 under --

21 MR. MCDONALD: Okay. It was a 30(b)(6), Your Honor.

22 THE COURT: Okay.

23 MR. MCDONALD: It was a 30(b)(6), and it was limited
24 on its topics to seeking information about the essential
25 proceedings and creditors, et cetera.

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1 THE COURT: Right.

2 MR. MCDONALD: And then what we perceived from
3 comments made by counsel at the last conference, as well as
4 what was contained in their letter brief, that they were
5 seeking to broaden that to include issues concerning claims
6 against SPGK. But now that it's clear that there is a pending
7 proceeding in the Cayman Islands, case law is crystal clear on
8 this, they cannot seek further discovery with regard to any
9 claims that are at issue in the Cayman Islands.

10 THE COURT: Okay. So really, it's -- and when was the
11 adversary proceeding, or whatever the right term is, the
12 proceeding commenced in Cayman?

13 MR. MCDONALD: The writ was issued on October 11th,
14 Your Honor. It was an amended writ.

15 THE COURT: Which is eight days ago.

16 MR. MCDONALD: Yes, Your Honor.

17 THE COURT: And that's the commencement date of the
18 action?

19 MR. MCDONALD: That was the issuance of the writ, yes,
20 by the Cayman court. And so therefore, the action is now
21 pending there. All of the parties have been served. Parties
22 has agreed to accept service on behalf of all of the
23 defendants, and that has occurred.

24 THE COURT: So -- okay.

25 MR. MCDONALD: Your Honor --

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1 THE COURT: So what I'm hearing is that that's your
2 primary argument at this point, really, is -- or I guess maybe
3 you just --

4 MR. MCDONALD: Oh, no, I have to --

5 THE COURT: -- you had assumed dispositive that you
6 don't have to go through your whole litany.

7 MR. MCDONALD: They are also seeking discovery with
8 respect to the motion to terminate the recognition. And I'd
9 like to just address that separately. But Your Honor --

10 THE COURT: Sure.

11 MR. MCDONALD: -- there's one other point with respect
12 to the proceeding that has now commenced in the Cayman Islands.
13 There is now a pending proceeding in the plenary court over the
14 ownership of these funds. We believe that while we believe, as
15 Your Honor stated at the very beginning of this case, that
16 there was an equitable basis to restrain the funds, as well as
17 the fact that we hit all the standards of a preliminary
18 injunction, we believe now that this pending proceeding clearly
19 demonstrates that there is a dispute in another court, and this
20 court, as a court in an ancillary proceeding to give aid to
21 that court, should not or really should not terminate the
22 restraint that the Court initially imposed at the outset of
23 these proceedings.

24 So we would submit the motion to terminate the
25 restraint itself should either be dismissed or withdrawn.

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1 THE COURT: Okay. I mean, let's see. This is not --
2 this isn't necessarily germane to the motions before me, but
3 why was the plenary proceeding not brought before a week ago?

4 MR. MCDONALD: Your Honor, as we've stated in our
5 status reports to this court, we have been undertaking an
6 extensive investigation and so are the foreign representatives
7 into potential claims against SPGK and its principal and its
8 related entities. We had other proceedings going involving
9 SPGK in the Cayman Islands as well. And as a result of those
10 investigations and proceedings, we finally got to a point we
11 were comfortable with the commencement of the action. So it
12 took some time.

13 THE COURT: Um-hum.

14 MR. MCDONALD: As we noted in our status reports to
15 this Court, we have -- or we and the foreign representatives
16 and their counsel in the Cayman Islands have had to undertake
17 the review of millions of pages of documents. There have been
18 numerous interviews of potential witnesses. And quite frankly,
19 Your Honor, these proceedings commenced here by SPGK have
20 really diverted a lot of our efforts to get that moving.

21 So it's been a long slog getting through litigating
22 these motions. But once we were at a position where we felt it
23 was comfortable, we did it.

24 THE COURT: Okay. And it seems to me -- all right.
25 So I'm just trying -- let me circle back to the function of

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1 this deposition. Right. I guess it's now being sought for two
2 broad reasons. One is in aid or support of a motion to --
3 whatever the right word is, but terminate or unrecognized the
4 foreign proceeding. And the other is to terminate the
5 restraint on funds, correct? So it seems --

6 MR. MCDONALD: Your Honor, may I --

7 THE COURT: Go ahead.

8 MR. MCDONALD: interrupt just briefly? The
9 30(b)(6) --

10 THE COURT: Yes.

11 MR. MCDONALD: -- the way it was captioned and the way
12 it was originally served related solely to the motion to
13 terminate the recognition. The additional discovery that they
14 are purportedly seeking is not in that subpoena and is only in
15 statements that counsel has made and alluded to in their
16 letter. And as we noted in our response to that, that they're
17 basically attempting to utilize the contested matter to have a
18 fishing expedition into an investigation of potential claims.

19 THE COURT: Okay. I got it.

20 MR. MCDONALD: (Indiscernible) the Court doesn't have
21 to deal with that now because with the pending proceeding, the
22 Court doesn't have to deal with any discovery with respect to
23 (indiscernible).

24 THE COURT: Well, look, it seems to me I -- you're
25 sounding very at least plausible to me that the pending

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1 proceeding Rule means that I should not create a or countenance
2 a U.S.-based discovery setting where on a dispute that is now
3 actively being considered by the Cayman court, I think. That
4 being the essentially disposition of the funds or ownership of
5 the funds dispute, which is tied to the restraint.

6 But as to whether or not to terminate recognition of
7 the foreign main proceeding on grounds asserted, which will be
8 that it was incorrectly granted in the first place or that
9 circumstances have changed such that recognition is no longer
10 appropriate, I'm not sure that the pending proceeding Rule
11 knocks out that stated purpose of the discovery.

12 What's the answer to that?

13 MR. MCDONALD: Your Honor, I agree with your
14 conclusion on that, but the termination of the recognition is
15 purely a legal issue, Your Honor. So there are a couple of
16 aspects that we addressed in our papers.

17 The first and foremost was the standing to terminate
18 recognition. And the response back from counsel has simply
19 been, since we have a dispute over funds, we have standing.
20 But they don't have standing. They're neither a creditor nor a
21 contributory shareholder of Ascentra. They did not object to
22 recognition. In fact, at the outset of the proceeding, they
23 consented to recognition. So we never raised the issue of
24 standing.

25 The only issue that was raised at the outset of these

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1 proceedings was with respect to the restraint on the funds.
2 And SPGK asked for and was granted by this Court the ability to
3 bring a proceeding in a non-U.S. court to seek a determination
4 of ownership of those funds. Standing only became an issue
5 when they filed this motion, and we raised it in our objection.
6 We hit it right on right at the very beginning. It's our first
7 argument.

8 THE COURT: When's the hearing date on the motion --
9 I'll just call it motion to terminate?

10 MR. MCDONALD: We don't have a hearing date right now,
11 Your Honor, because of this pending discovery dispute. And we
12 sent out to court, and the court entered an order specifically
13 modifying that. And the parties agreed that we would set a
14 date once it's determined whether or not the deposition can go
15 forward. And then it would be two weeks after that that we
16 would have a response date, a reply date, for SPGK, and then we
17 would agree on a hearing date at that point, Your Honor.

18 THE COURT: Okay. And --

19 MR. MCDONALD: But (indiscernible) --

20 THE COURT: Yeah. Go ahead.

21 MR. MCDONALD: Yeah. So there's a certain logic to
22 this. If they didn't have standing or don't have standing in
23 the first place to challenge recognition, how can they have
24 standing to seek this discovery? They're logically tethered.
25 They just can't because there was a -- and going to answer your

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1 question at the very beginning, Your Honor, simply because that
2 there's a contrived, contested matter they knew full well we
3 would have to oppose the attempt to terminate recognition
4 doesn't entitle them to discover it.

5 But more importantly, Your Honor, what they're seeking
6 is discovery that, A, the Court has already said they waived.
7 They did not cross-examine any of the declarations at the
8 recognition hearing. Now, they are seeking -- and their
9 motion, Your Honor, is based on the fact that they are
10 submitting to this Court that the bases for recognition were
11 lacking at that time.

12 THE COURT: Right.

13 MR. MCDONALD: They are now seeking prospective
14 discovery about things such as whether or not a creditor has
15 filed a claim, whether proof of debt has been filed, whether
16 there have been communications with shareholders. And we have,
17 as we've demonstrated in our papers, A --

18 THE COURT: Don't all those -- yeah, don't all those
19 go to the question of whether the proceeding is or is not
20 collective?

21 MR. MCDONALD: No. Respectfully, no, Your Honor. It
22 is the nature of the proceeding. If you look at their papers,
23 their motion, their motion focuses and relies very heavily on
24 the Singapore decision. And the question that they have posed
25 to this Court is as a matter of law, should it official

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1 liquidation of a solvent entity under the Companies Act in the
2 Cayman Islands be entitled to recognition under Chapter 15.
3 That is the legal issue they have posed. Whether there is a
4 creditor or not is irrelevant. Whether there have been
5 communications with shareholders, that's irrelevant. They're
6 not a shareholder.

7 And I think as we also demonstrated, too, Your Honor
8 in our papers, there are matters that are now -- that are under
9 seal in the Cayman Islands. And they're seeking testimony from
10 the foreign representative --

11 THE COURT: Right. Well, yeah, look, let me jump if
12 I -- I'll just jump on that one and say, look, if there's
13 material that a witness can't testify to by reason of sealing
14 order or Cayman Law or anything else, it seems to me the
15 solution to that is to instruct not to answer or get some sort
16 of ruling from the court if necessary that's tailored to the
17 topical restrictions that the person operates under. Right. I
18 mean, that's not a should-there-or-should-there-not-be-a-
19 deposition-at-all-type quite?

20 MR. MCDONALD: I understand, Your Honor. I agree that
21 it is by topic. But many of this -- most of the contents of
22 this report relate to the topics they are seeking
23 (indiscernible).

24 THE COURT: So what happens if I rule for you, and I
25 say, okay, I'm not going to -- I'm not going to require the

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1 deposition to occur, now finish your briefing or if necessary,
2 argue before me, and we'll see where we get. And then I'm
3 told -- and then I just -- and then it appears that evidence
4 was needed, and you prevented your adversary from developing
5 evidence, going to whatever -- really, I guess it would be
6 going to the whether the requirements of recognition are met or
7 are no longer met or something else going to termination.

8 What happens then? I mean, don't I then have to
9 adjourn the -- schedule further proceedings, authorize
10 deposition, come back for an evidentiary hearing? I mean, it
11 gets a little cumbersome.

12 MR. MCDONALD: Your Honor, the parties are left of
13 their pleadings here. The motion and the objection do not
14 raise any fact issues. Indeed, while they said they want to
15 test the factual statements contained, they haven't identified
16 one fact that they need to test, and they use the word "test"
17 regularly in their pleading to you, in their letter to you.

18 There are no facts to test. We are dealing with a
19 question of law, which the Singapore court dealt with as a
20 question of law. The Singapore court did not, and this Court
21 does not, have to get into whether or not a proof of debt has
22 been sought to be filed in the proceeding. It is the nature of
23 the proceeding and whether or not it satisfies the requirements
24 for recognition of a foreign proceeding. And that is what
25 the --

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1 THE COURT: Right.

2 MR. MCDONALD: And that is what is before the Court.

3 THE COURT: And I'll add, by the way, that also with
4 termination that there's also consideration of whether parties
5 have relied on the recognition or if circumstances have changed
6 such that termination isn't warranted, even if the original
7 grant on closer examination might not hold water; isn't that
8 so?

9 MR. MCDONALD: Yes Your Honor, there is --

10 THE COURT: Right.

11 MR. MCDONALD: As we demonstrated, there's tremendous
12 prejudice to the foreign representatives if --

13 THE COURT: Right.

14 MR. MCDONALD: -- the recognition is terminated. We
15 are still in the process of investigating other claims that
16 this estate may have. And it's not just against SPGK. There
17 are other funds that may be at issue here with other parties
18 that are still being investigated.

19 THE COURT: Okay.

20 MR. MCDONALD: We just, we served a 2004 subpoena, I
21 think, a week ago, two weeks ago --

22 THE COURT: Okay.

23 MR. MCDONALD: -- on a party. Your Honor, the bottom
24 line here is what we have said in our opposition and what they
25 have said in their motion does not create a fact issue that

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1 requires a deposition. And even though there is a contested
2 matter, Your Honor, there has to be proportionality and
3 relevancy, and there is no proportionality or relevancy
4 demonstrated by SPGK whatsoever for this deposition.

5 THE COURT: Okay. So I appreciate your bottom line.
6 And I just want to make sure things are correctly entering my
7 brain. So here's my takeaway.

8 First off, you say pending proceeding Rule as to
9 should eliminate any use of Chapter 15 proceedings in aid of
10 the Cayman proceedings to conduct discovery going to the
11 restraint on funds. And those are now directly at issue in
12 litigation pending in the Cayman Islands.

13 The other motion that we have to take into account is
14 the motion to terminate the recognition. And as to that, it's
15 driven by purely legal issues such that there is no relevance
16 or proportionality to the discovery requested, and rather, that
17 motion should be considered purely as a matter of law based on
18 legal submissions. Right. I have this right?

19 MR. MCDONALD: That is correct, Your Honor. And that
20 is what their motion has as its basis, surely, the nature of
21 the Cayman law. They have no --

22 THE COURT: Okay.

23 MR. MCDONALD: They don't cite to any facts, and we
24 don't cite to any facts. This is (indiscernible) --

25 THE COURT: Well, I mean, I'm sure they're -- yeah,

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1 I'm sure they're going to say, look, we don't have facts
2 because we haven't been able to ask the facts of the foreign
3 representative or the deponent who can tell us, are there
4 creditors, is money owed, is money being assembled for
5 distribution, is there contemplation of distributions, when and
6 how, or any of the other -- I don't know whatever else they
7 want to ask. Anyway, okay. But I take your point.

8 MR. MCDONALD: Your Honor, this Court has asked us on
9 a regular basis to provide status reports to the Court.

10 THE COURT: Right.

11 MR. MCDONALD: And you requested that at the outset is
12 proceeding. We have adhered to that. Our last status report
13 was literally filed the morning that they commenced these
14 motions, filed these motions.

15 THE COURT: Okay. I --

16 MR. MCDONALD: And in that report, we reported to the
17 Court that the foreign representatives were, in fact, in
18 communication with potential creditors and had sought the
19 filing of proofs of debt. Those are statements by counsel in
20 response to Your Honor's request to keep the Court apprized.

21 THE COURT: Let me ask you --

22 MR. MCDONALD: Whether or not --

23 THE COURT: Yeah.

24 MR. MCDONALD: Yeah. Whether or not a proof of debt
25 is sought, whether or not a proof of debt is filed, again, is

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1 entirely irrelevant to the question of recognition of the
2 official liquidation of a solvent entity under the Cayman
3 Companies Act.

4 THE COURT: Let me ask you this. Can I analogize the
5 procedural posture as being that there's a motion filed by the
6 SPGK parties, actually, two motions, but those functionally are
7 sort of like complaints and that your opposition is
8 functionally like a 12(b)(6) motion to dismiss, saying legal
9 matter, as a matter of law, nothing here. Don't launch into
10 discovery. Just rule for us as a matter of law because you
11 can, and nothing more is required. To which they reply and
12 say, not so.

13 So one possibility is to say, fine, I will treat this
14 like a 12(b)(6) motion, your argument on your asserted legal
15 basis, and then if I disagree with you or I conclude further
16 discovery is necessary, open it up at that point.

17 Does that line of practical thinking make sense to
18 you, Mr. McDonald?

19 MR. MCDONALD: Yes, Your Honor, with respect to both
20 motions.

21 THE COURT: Okay.

22 MR. MCDONALD: Respectfully, I think the commencement
23 of the Cayman proceeding really does necessitate either the
24 withdrawal or denial of the motion to terminate the restraint.

25 THE COURT: Right. Okay. I understand.

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1 MR. MCDONALD: And then secondly, the Singapore
2 decision, which they rely upon principally for bringing the
3 motion, we would submit militates in favor of the denial of
4 that motion straight up as a matter of law. But we agree, with
5 obviously interpretation, the Singapore Court relies very
6 heavily on U.S. case law, including Your Honor's, that as a
7 matter of law, this Court should recognize (indiscernible).

8 THE COURT: No, I understand. I mean, of course, I'm
9 not bound by the Singapore court or its thinking, although it's
10 a outstanding court. But these are issues that are kind of
11 getting active consideration all around the globe at this
12 point.

13 Okay. Let me turn to Mr. Morris. Thanks for your
14 patience. So you can address this however you like. I guess
15 the -- but I guess I'm interested in emerging with why you
16 think it's not workable to defer deciding whether or not to
17 permit the deposition and if you take the current motions as
18 effectively a 12(b)(6) motion and then open up for discovery if
19 it proves necessary upon considering the arguments.

20 MR. MORRIS: Thank you, Your Honor. John Morris,
21 Pachulski Stang Ziehl & Jones, for SPGK. Your Honor, the
22 misrepresentations about our position need to be addressed. We
23 haven't asked for any ruling as a matter of law. Like, I don't
24 even know where to begin. And just the disingenuous nature of
25 the presentation, I have to respond to.

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1 They took my client's deposition for more than seven
2 hours. If they thought this was a proceeding that could be
3 decided as a matter of law, why did they do that? Why do they
4 get to now be in the completely unfair position of having taken
5 my client's deposition and then filing on the eve of this
6 hearing this complaint in the Cayman Islands and say, wait a
7 minute, now you can't take my client's deposition.

8 The motion that's before the Court is whether it
9 should undo the restraint on these funds. They have the burden
10 of proof. They must prove that they're likely to succeed on
11 the merits. They're not going to put any evidence on that.
12 We're not allowed to inquire as to the likelihood of success on
13 the merits because instead of filing it in this court, instead
14 of foregoing my client's deposition, they take my client's
15 deposition, they filed that proceeding in the Cayman Islands,
16 and then erect a barrier and say, you can't do it. That is so
17 wrong, Your Honor. It's just, there's nothing fair about that.

18 THE COURT: Right.

19 MR. MORRIS: This is a contested --

20 THE COURT: I hear you. Let me ask, does the
21 deposition tie to both motions?

22 MR. MORRIS: The deposition is tied to both motions,
23 and counsel in their papers keep referring to this subpoena.
24 The subpoena, as we have said time and time again, became
25 irrelevant when they filed oppositions to the motions. Because

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1 once they filed oppositions to the motions, you had contested
2 matters. Once you had contested matters --

3 THE COURT: Right.

4 MR. MORRIS: -- we obtained the right to take
5 discovery. It's really not more complicated than that. And
6 they shouldn't be able to manufacture defenses to that as we're
7 going through this process. They could have filed this
8 complaint in New York. They didn't.

9 Instead, what they did is they came to New York. They
10 didn't tell the Court that it was a solvent entity. They
11 obtained a restraint on our money, they took my client's
12 deposition, and then they file in Cayman Islands and say, hey,
13 you stop now.

14 THE COURT: When was your client --

15 MR. MORRIS: You stop now.

16 THE COURT: When was your client deposed?

17 MR. MORRIS: August.

18 THE COURT: And in connection --

19 MR. MORRIS: After the motion was filed.

20 THE COURT: In connection with --

21 MR. MORRIS: And now, they're here saying you should
22 decide it as a matter of law, after taking my client's --

23 THE COURT: Hang on. Wait, wait, wait.

24 MR. MORRIS: -- deposition for seven hours?

25 THE COURT: Hang on. You're getting on a roll. But

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1 let me interrupt your roll and ask, was that deposition in
2 connection with these motions?

3 MR. MORRIS: Yes, it was only in connection with these
4 motions. Talk about a fishing expedition. They went far
5 beyond that. But it was only in connection with these motions.

6 How can they do that with a straight face? How can
7 they take my client's deposition for more than seven hours,
8 then file in the Caymans when they couldn't file it in New York
9 and say, you can't do it? How are they going to prove
10 likelihood of success on the merits? How come we are not
11 entitled to inquire as to the likelihood of success on the
12 merits? This is Alice in Wonderland, Your Honor.

13 THE COURT: Okay. And --

14 MR. MORRIS: As far as standing goes, please. SPGK is
15 the only party today affected by the recognition order. If the
16 recognition order was not entered, Ascentra would never have
17 been entitled to obtain from this court the restraint on SPGK's
18 money. It's really that simple. Of course we have standing to
19 challenge the recognition order because that order affects us.

20 And we've cited cases in our briefs. You don't have
21 to be -- this isn't the Cayman Islands. As I said before, this
22 is America. You don't have to be a creditor. You don't have
23 to be a debtor. You have to be a party-in-interest. You have
24 to be somebody who is affected by the order. And there is no
25 dispute, there can't be a serious dispute, that we're affected

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1 by the order because if the recognition order didn't exist, our
2 money wouldn't have been tied up in the way it's been.

3 THE COURT: Okay. I got it. Let me ask this -- oh,
4 sorry, Mr. Morris. Any other really important takeaways you
5 want to emphasize?

6 MR. MORRIS: This is not a fishing expedition, Your
7 Honor. We don't have to do a 30(b)(6) notice. We don't have
8 to send subpoenas at this point. They have admitted that Mr.
9 Robinson is the only person who has knowledge about the
10 debtor's affairs.

11 We should just be able to take his deposition. It's
12 proportional. It'll be for the same seven hours that they took
13 our client's deposition. It'll be on the same two motions that
14 they took discovery in connection with my client. This is
15 simple.

16 THE COURT: And what do you want to find out, in
17 essence, and how is that going to further your ability to
18 litigate the motion?

19 MR. MORRIS: A great question. You actually
20 identified some of the issues yourself. Is this a collective
21 proceeding for the benefit of creditors? Are there creditors?
22 How many creditors are there? What's happening in the case in
23 the Cayman Islands?

24 And I learned this from their expert. This is not --
25 it got presented, I think, somehow as the Court is being asked

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1 to -- let me see if I could just find my note -- to recognize
2 an official proceeding. That's not what this court does. This
3 court doesn't recognize official proceedings. They recognize
4 foreign proceedings as defined in 101(23). That's what it
5 does.

6 This is not a foreign proceeding. I mean, frankly,
7 I'm being told that we relied heavily on Singapore. What we
8 actually rely on in the first instance is the fact, not a legal
9 issue, but the fact that this is a solvent entity. And that
10 fact is going to -- it might be dispositive, but it's certainly
11 important in the Court's determination as to whether this is a
12 foreign proceeding under the United States Bankruptcy Code.

13 THE COURT: Okay.

14 MR. MORRIS: And the reason that it's important, as
15 former-Judge Henderson testified at length, is because
16 creditors have virtually no role in a wind-up proceeding in the
17 Cayman Islands where the entity is solvent.

18 And so we want to find out, because they asked a
19 million hypotheticals of my expert. Hypothetical this.
20 Hypothetical that. Hypothetical the other thing. I don't
21 think the Court should entertain hypotheticals. I think the
22 Court should make findings of fact as to what is actually
23 happening in this proceeding that warrants recognition by a
24 United States Bankruptcy Court. And --

25 THE COURT: I just want to make sure, you just

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1 referenced deposition questions to an expert. Before, you said
2 your principal was deposed. Is it --

3 MR. MORRIS: They were both deposed.

4 THE COURT: Okay.

5 MR. MORRIS: They were both deposed.

6 THE COURT: And hypotheticals are perfectly
7 appropriate for experts.

8 MR. MORRIS: They are. I'm not saying that there's
9 anything wrong with asking hypotheticals, but I have to -- I
10 have to be able to ask about facts. Right.

11 THE COURT: Okay. I got it.

12 MR. MORRIS: You can ask hypotheticals, but what's
13 actually happening in this case?

14 THE COURT: All right. I got it.

15 MR. MORRIS: Isn't that important for the Court?

16 THE COURT: Let me turn to Mr. McDonald. So if you've
17 deposed the principal of SPGK, what's your answer to the
18 seeming unfairness and disparity point that Mr. Morris makes?

19 MR. MCDONALD: I'd like to address everything Mr.
20 Morris just said because -- and I'm never going to be
21 disingenuous with this Court, and I take great exception to
22 being accused of doing so.

23 First off, Your Honor, they submitted a declaration of
24 Mr. Yoshida, a lengthy declaration, to get the restraint on the
25 funds terminated. That declaration was filed only with respect

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1 to that. We took Mr. Yoshida's deposition. As we set forth in
2 our papers, we note that he was wrong in many of his statements
3 that he said in his declaration.

4 We tested his declaration. They put fact issues
5 before this Court. We deposed Mr. Yoshida in London along with
6 their expert, their Cayman law expert, who lives in Cayman. We
7 learned at the outset of that deposition that they prepped Mr.
8 Yoshida in New York. So they made us go to London for great
9 expense to do these depositions. And we did it. We
10 accommodated them on their request to have it in London,
11 despite having been prepped in New York.

12 All that aside, we had to look at what Mr. Yoshida was
13 saying was the basis for his claim of ownership over these
14 funds. And as we have now demonstrated through our proceeding
15 in the Cayman Islands, and I'll address that in a second, there
16 is a clear case that he is not entitled, he, Mr. Yoshida, who
17 is the principal of SPGK, entitled to keep those funds. They
18 are assets of the Ascentra estate, full stop.

19 The proceeding was commenced in the Cayman Islands,
20 Your Honor, because the SPGK is a Cayman entity and Ascentra is
21 a Cayman entity. And we are dealing with funds at issue in
22 that case that are not just in the United States. There are
23 funds that are in Singapore, there are funds that are in Taiwan
24 that are at issue in that proceeding. So we had to commence it
25 in Cayman Islands.

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1 THE COURT: Okay. All right. Look, here --

2 MR. MCDONALD: Your Honor --

3 THE COURT: Yeah, go ahead.

4 MR. MCDONALD: Just, if I could, Your Honor, this is a
5 Chapter 15. This is a proceeding in aid of a foreign
6 proceeding. It's an ancillary proceeding. It's not a plenary
7 proceeding.

8 What they're seeking to do by testing the likelihood
9 of success of a Cayman Island proceeding is to have this Court
10 review and weigh evidence that is going to be submitted in
11 connection with a Cayman litigation. That is wholly
12 inappropriate.

13 THE COURT: Well, if you had filed a motion -- you
14 did, when you filed your motion in whatever it was, in 2021 for
15 recognition, had they sought discovery on the topic of to
16 elicit facts relevant to whether the foreign representatives
17 meet the recognition requirements, that would have been
18 appropriate, right? That would have been permitted?

19 MR. MCDONALD: No, Your Honor. They didn't have
20 standing to bring that -- to object to that (indiscernible).

21 THE COURT: Would any party have standing? Is there
22 any party in the planet who would have standing to object to
23 the proposed --

24 MR. MCDONALD: Recognition?

25 THE COURT: -- recognition? Sorry.

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1 MR. MCDONALD: A creditor and a shareholder, someone
2 that has a monetary interest in the outcome of the Cayman
3 proceeding, would have standing. So even a U.S. creditor
4 effective --

5 THE COURT: All right. So let me get you off
6 standing. Assuming a party with standing, because their
7 position is, no, we are the party affected by this. Of course
8 we have standing. I'm not going to decide that one way or
9 another. But assume a party with standing wants to take
10 discovery with respect to eligibility for recognition, is that
11 permissible?

12 MR. MCDONALD: There have been, I think, a couple of
13 instances in the case law that I've seen where courts have
14 allowed limited discovery when there is a dispute over the
15 foreign proceeding itself. But --

16 THE COURT: Okay.

17 MR. MCDONALD: And I don't know if this occurred or
18 not, but Your Honor's decision in Global Cord, I don't know if
19 there was discovery there. And I think the issue in Global
20 Cord was simply the nature of the proceeding -- of that
21 proceeding in front of the Court.

22 The issue they raised, the issues they raise in their
23 papers, is whether or not a solvent -- and solvency is not an
24 issue here, Your Honor. It's not a fact issue, and I'll get to
25 that in one second. But they have raised a legal issue as to

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1 whether an official liquidation of a solvent company under
2 Cayman law is entitled to recognition as a foreign proceeding.

3 The solvency is a certificate of solvency that was
4 filed by the official liquidators. It is before this Court.
5 It has been submitted in evidence to the Court. We don't
6 dispute it. It's there. It's an official document the Court
7 can take judicial notice of. And that hasn't changed.

8 If that changes, we have an obligation to report that
9 to this Court under Chapter 15. We would, of course, apprise
10 the Court of that change in circumstance. And indeed, that can
11 change. As we've noted in our papers and as Judge Henderson
12 has noted, a determination of solvency can change to insolvency
13 or doubtful solvency under Cayman law.

14 But what they're asking this Court to rule from the
15 outset is that the nature of the proceeding is such that it
16 should not be recognized. And the only fact Mr. Morris talked
17 about was solvency. That's not a fact to take discovery about.
18 It's already there. The Court takes judicial notice of that.

19 THE COURT: Okay. All right. Look, I think, here's
20 something I need to -- I think what I'm going to need to do
21 today is end up reserving on this, which pains me terribly
22 because there's an unbelievable amount of work litigating,
23 writing, and time passing all on the subject of can a
24 particular person be deposed. Obviously, foreign
25 representatives are very dug-in on this, and it's a matter they

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1 view as principled one.

2 I think what I need to do to be responsible is go back
3 and reread the briefing I've got on the underlying dispute that
4 this ties to to assess relevancy and proportionality. I take
5 very seriously Mr. Morris' point that his client's already been
6 deposed. I do think there's a real fairness concern about
7 that. And I also -- well, yeah. I'm also thinking about just
8 a degree of efficiency and avoiding possible protracted multi-
9 phase proceedings. But I'll look at the papers and think about
10 this.

11 Can you all tell me what briefs exist that I should be
12 reading and where I'll find them on the substantive dispute? I
13 mean, I can look readily enough, but if you know off the top of
14 your head.

15 MR. MCDONALD: Well, Your Honor, we have the two
16 motions that were filed by SPGK and the declarations in support
17 of that.

18 THE COURT: Yep. Yeah. Yeah, so --

19 MR. MCDONALD: And that --

20 THE COURT: -- that's what I'm thinking of. Where are
21 they?

22 MR. MCDONALD: -- you have our two objections. You
23 have our two objections --

24 THE COURT: Um-hum.

25 MR. MCDONALD: -- to that, as well our declaration of

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1 our claimant expert who Mr. Morris indicated has been deposed.
2 So they've already --

3 THE COURT: Um-hum.

4 MR. MCDONALD: -- deposed one of our -- our expert
5 witness. And then there were the three letter briefs submitted
6 in -- two by us, one by SPGK in connection with this discovery
7 dispute. And then, Your Honor, there is the letter of October
8 11, which attaches a copy of the Cayman proceeding.

9 THE COURT: Right.

10 MR. MCDONALD: And in there, we cite to the case law
11 on pending proceeding. And then there is the letter we sent
12 down yesterday, Your Honor, with respect to the Singapore
13 proceeding.

14 THE COURT: Okay. Got it. Thank you. That's
15 helpful. I mean, I spend a lot of time scrolling through the
16 docket sheet in this. And it's all docketed in this
17 proceeding, right?

18 MR. MCDONALD: Yes, Your Honor.

19 THE COURT: Yeah.

20 MR. MCDONALD: I think it's docket entries 71, 73, 74,
21 77, and 78 for the recent submissions, Your Honor.

22 THE COURT: Okay. That's helpful. So yeah, I just, I
23 am sorry not to be able to give you an answer on the spot, but
24 I want to --

25 MR. MCDONALD: Yeah.

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1 THE COURT: -- proceed with care. Obviously, you both
2 care very powerfully about your positions, and I need to handle
3 it with more care than I could manage trying to rule on the
4 spot.

5 I'll give you --

6 MR. MCDONALD: Your Honor (indiscernible) --

7 THE COURT: Yeah. Let me give you each one more shot
8 to plant any parting seeds in my brain. But as I go off and
9 read things.

10 Anything else you want to add? I'll start with Mr.
11 Morris.

12 MR. MORRIS: Sure. Just very quickly, Mr. McDonald, I
13 apologize if you interpreted my words as a personal attack. I
14 would never do that. I've enjoyed working with you, and I
15 didn't mean for it to get personal if that's the way you
16 interpreted it. The disingenuous comment had to do with taking
17 my client's deposition and then trying to stop me from taking.
18 That's all. It wasn't personal.

19 Having said that, Your Honor, on the substance,
20 parties take discovery on the merits of someone's allegations
21 all the time when there is a request for an injunctive relief.
22 Right. And Your Honor hit the nail on the head. Had we sought
23 discovery, had SPGK sought discovery when they first -- when
24 Ascentra first sought the restraint on SPGK's money, surely we
25 would have been entitled to discovery at that time.

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1 And I don't think that it should change now after they
2 took my client's deposition and chose to file the complaint,
3 really, as a defensive mechanism. In fact, I would argue that
4 they had the burden of proof on the issue of likelihood of
5 success on the merits. They still have the burden of proof on
6 the likelihood of success on the merits. And we now know
7 better than we knew before what the claims and the allegations
8 are.

9 We should be allowed to test that. I don't understand
10 how they can possibly -- instead of withdrawing the motion, I
11 actually think what should be withdrawn is the restraint
12 because they're telling the Court they're not going to put on
13 evidence. They're not going to allow us to put on evidence
14 that we get from them. I don't understand how they're going to
15 carry their burden of proof. They simply can't.

16 THE COURT: Okay.

17 MR. MORRIS: So I'll start with that. And then on the
18 motion to terminate, I don't want to beat a dead horse. We
19 wouldn't be here today if there wasn't a Chapter 15 recognition
20 order. We would not be here, right, because there would be
21 no -- Your Honor would never have had the ability to enter the
22 restraint. So that came first. And if we undo that, then the
23 restraint gets undone as well. We certainly have a pecuniary
24 interest.

25 And finally, I'll just finish with the matter of

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1 fairness. Your Honor touched on it. I think, I just, it's
2 unfathomable to me that somebody would take my client's
3 deposition and then erect a barrier and say, we can't do it.
4 And by the way, we want the Court to rule as a matter of law.
5 If you thought this was a legal issue, why did you take the
6 deposition? They're the ones who got the free discovery.

7 THE COURT: Okay. Got it.

8 MR. MORRIS: It's just not right.

9 THE COURT: All right. Thank you.

10 MR. MCDONALD: Your Honor.

11 THE COURT: Let me cut you off. We're coming up on
12 your deadline to be before another judge --

13 MR. MORRIS: I'm done.

14 THE COURT: -- and of mine to join some colleagues for
15 a meeting.

16 Mr. McDonald, let me give you a parting shot, though.

17 MR. MCDONALD: Yes, Your Honor. Your Honor, so first
18 of all, SPGK consented to the restraint and that SPGK
19 complained that no action was taken, even though they were
20 reserved the right to do that. And we have investigated the
21 claims, and the fruits of that investigation, Your Honor, are
22 going to be privileged, I'm telling you right now. This is
23 work product. This has all been done by counsel with the
24 foreign representatives.

25 The facts that were put in their motion to terminate

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1 the restraint came solely from Mr. Yoshida. It's the first
2 time they brought those facts before this Court. We had every
3 right to depose Mr. Yoshida. They were attempting to create a
4 case in front of this Court that SPGK was entitled to these
5 funds. And we demonstrated in our opposition that, in fact,
6 they have no case for that.

7 And the evidence that we have put before the Court is
8 their own testimony and their own documents. This is not like
9 a company where you have a fact witness to be deposed. This is
10 a trustee, the equivalent of a trustee, as Judge Gerber said in
11 China Medical. This is your seeking to depose a trustee on the
12 trustee's analysis of a claim. Your Honor would never allow
13 that in a U.S. proceeding. And Your Honor --

14 THE COURT: All right.

15 MR. MCDONALD: -- shouldn't allow it here.

16 THE COURT: Got it. All right. Let me ask you to
17 please order the transcript, and I'm going to -- I'm going
18 to -- while this is fresh in my mind, I'm going to go back and
19 reread papers on the underlying merits. It's possible I'll be
20 able to summon us for an oral ruling next week. So I don't
21 know. I'm saying that out loud, mostly to try to motivate
22 myself to move this promptly. But I will get to you as soon as
23 I can, possibly that soon, and if not, soon thereafter.

24 Oh, I would encourage you to discuss whether there's
25 some way with guardrails that something could occur. I mean,

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1 that you're flagging the privilege issues regarding your
2 investigation, that sounds right. I'm sure you'd be able to
3 assert privilege with regard to a lot of work. And there would
4 be a deposition that occurred with successful privilege
5 assertions. And if there's a relatively focused set of
6 questions on things like the sovereign or -- sovereign, excuse
7 me, solvent or nonsolvent status of the debtor or the
8 collective nature of the proceeding or role of creditors, those
9 facts could be developed. They are what they are. If it's
10 purely a legal issue, no harm done.

11 So this is not a ruling. This is my encouraging you
12 to think about that and see if you can reach some kind of
13 agreement to proceed that'll take this off my plate. But
14 otherwise, I'm going to -- I'm going to reserve. I mean, I
15 think you have presented meaty things for me to consider that
16 have real legal substance that I'll handle with care. But if a
17 practical solution emerges, I won't be sorry to hear it. Okay.

18 So I'll just leave it at that. Let me thank you for
19 your efforts. I'm sorry I can't deliver you a clearer answer
20 immediately, but I'll do the most responsible job I can as soon
21 as I can. And with that, good luck. And we're adjourned.
22 Take care.

23 MR. MCDONALD: Thank you, Your Honor.

24 (Whereupon these proceedings were concluded)
25

C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true
and accurate record of the proceedings.



River Wolfe (CDLT-265)

TTA-Certified Digital Legal Transcriber

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